

49-B

File No. Police II/52 (R)

Rules under the Bombay Police Act, 1951

Subject:—

P 18 (e)
1952

B BRANCH

Legal Department

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Legal Department.

A revised draft amendment in place of Home Department draft amendment ^{at} page 33 ante is sent herewith.

2. It is presumed that the District Magistrate will be asked to amend the rules made by them in their respective districts after following the procedure laid down in section 33(6), i.e. after previous publication.

3. Model Rules for licensing and controlling theatres and other places of public amusement notified under Home Department (Political) Notification No. 3407-Pol. dated the 12th December 1940 were issued under section 39A of the Bombay District Police Act, 1890. That Act did not contain the definition of the expression "place of public amusement" even though that expression was used in section 39A of the Act. The Bombay District Police Act has now been repealed and the Bombay Police Act, 1951 extends to all the districts in the State of Bombay. The expression "place of public amusement" has now been defined in section 2(9) of the Bombay Police Act, 1951. The rules made by the various District Magistrates on the lines of the model rules have been kept alive under section 167(1)(1) of the Bombay Police Act. Rule No. 1 of the said rules defining the word "premises" will be inconsistent with the definition of the expression "place of public amusement" as defined in section 2(9) of the Bombay Police Act, 1951. It is, therefore, necessary that instead of the word "premises" as used in rules made by the District Magistrates under section 39A of the Bombay District Police Act, 1890, the word "place of public amusement" should be substituted in those rules.

4. Home Department may consider the advisability of revising the said rules in the light of the above observations.

16/- J.H.D. 11/1
Additional Secretary to Government.

U.O. to H.D., No. 367, dated the 12th January 1952.

LEGAL DEPARTMENT.

Revised draft rules are sent herewith.

It is presumed that the Additional District Magistrate who has signed the preliminary notification is invested by Government under sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 with the powers of a District Magistrate under section 33 of the Act. If no such investment is made it will not be competent for the Additional District Magistrate to make Rules under section 33 since under that section it is only the District Magistrate who is empowered to make rules.

Rules 2, 3 and 4 in District Magistrate's draft (revised rule 3).- These have been combined into one rule as they all relate to an application for licences.

Rules 9 and 10 in District Magistrate's draft.- Have been omitted from the revised draft in view of section 131 of the Act.

16/- @/2

Deputy Secretary to Government.

U.R. to H.B.No.2000, dated the 2th February 1952.

KAN/27-6.
4 C.

Legal Department.

There is no objection to a rule being made on the lines suggested by the Secretary, Home Department, in view of the provisions of the second proviso to sub-section (1) of section 33 of the Bombay Police Act, 1951. It may, however, be pointed out that it will be necessary to issue a general or special order before the rules are actually published.

Id/- J.R.D. 13/2

Additional Secretary to Government.

U.R. to H.D. No.2350, dated the 13th February 1952.

KAN/27-6.
4 c.

Legal Department.

Para 2(i) of the Home Department note (p.83). Rule 3A may be printed in the licence form immediately after the revised rules. That rule may, however, be printed under a separate heading, namely, "Rule made by the District Magistrate under section 39A of the Bombay District Police Act, 1890 and which continues to be in force."

2. As pointed out in para. 9 of R.L.A.'s opinion No.2329, dated the 20th December 1951, these rules will be adopted by a District Magistrate as rules to be made by him under section 33 of the Bombay Police Act, 1951. In the rules that will be made by the District Magistrate, the license form at page 51 will form part of the rules and will naturally come at the end of those rules. But in copies of the licence ~~form which may be taken out for issuing~~ ~~of the licence may be printed on the front side, and the~~ licences, it may be printed on the front side, and the rules which are intended to be given for the information of the licensee may be printed on the reverse side as at present.

3. Para. 2(v) of Home Department note (p.84). - The view taken by the Home Department is correct. Revised rule 7 may be omitted in view of the provisions of rule 3A.

Id/- J.R.D. 27/2

Additional Secretary to Government.

U.R. to H.D. No.3189, dated the 27th February 1952.

Legal Department.

There is nothing to prevent Government from issuing such general or special orders after the publication of the rules but it would be desirable to issue them before the rules are actually published so that District Magistrates and other licensing authorities ~~may~~ may know what are the general or special orders of Government subject to which they are to exercise their power of granting licences under the rules and whether they are required to take any action with reference to these orders before granting such licences. In the absence of such orders District Magistrates and other licensing authorities will be free to issue licences under the rules as they stand.

Id/- J.R.D. 17/3

Additional Secretary to Government.

U.R. to H.D. No.262-Confl., dated the 17th March 1952.

KAH/27-6.

4 c.

Legal Department.

The proposal of the Home Department is to make an order under section 27 of the Bombay Police Act, 1951, providing for an appeal against the order of certain police officers to their immediate superior in addition to the appeal which lies to the State Government under section 27 of the Act. Such an order is not legally feasible under section 27 of the Act. Under sub-section (2) of section 25 of the Act the Inspector-General, the Commissioner, the Deputy Inspector-General, the Principal of the Central Police Training School, Nasik and the District Superintendent shall have the authority to punish any member of the subordinate rank. Section 27 then provides that an appeal against any order passed against the police officer under section 25 or the rules or orders thereunder, shall lie to the State Government itself or to such officer as the State Government may by general or special order specify; Under this section what is contemplated is that either the State Government should hear appeal against any order passed against the police officer under section 25, or should appoint some other officer to hear such appeal. If the officer has been so appointed, the power of the State Government to hear appeal would be transferred to him and the State Government would no longer have any power to hear any appeal. Perhaps this is not intended by the Home Department as appears from the provision of clause (g) of the draft order. For the above reasons the order as drafted by the Home Department is not legally in order.

Id/- J.R.D. 19/3
Additional Secretary to Government.

U.R. to H.D.; No.4325, dated the 20th March 1952.

LEGAL DEPARTMENT.

The course proposed by the Home Department at page 33 to reissue the secret circulars issued under the old District Police Act, 1890, is not in order. Section 39A of the old Bombay District Police Act, 1890, empowered the Magistrate of a District to make rules for licensing and controlling theatres and other places of public amusement. That section or any other provision in the Act did not empower the Provincial Government to issue any orders subject to which licences could be granted in respect of theatres and other places of public amusement. The secret circulars issued in 1950 and 1951, i.e., before the coming into force of the Bombay Police Act, 1951, fettered to a certain extent the discretion of the licensing authorities in the matter of granting licences and were, therefore, not validly issued. These circulars cannot, therefore, be re-issued as proposed by the Home Department.

As pointed out in Additional Secretary's opinion No. 262-Conf1., dated 17th March 1952, general or special orders in the matter of the grant of licences can be issued by Government in view of the provisions of the second proviso to sub-section (1) of section 33 of the new Bombay Police Act, 1951. The secret circulars issued in 1950 and 1951 should be re-examined and a self-contained order including suitable instructions contained therein should be issued to the licensing authorities. This order should not be marked secret since occasions might arise when it would be necessary to produce it in a court of law.

Id/- J.R.D. 22/4

Additional Secretary to Government.

Legal Department.

Section 33(1) of the Bombay Police Act, 1951, empowers the District Magistrate in areas under their respective charge or any part thereof to make rules not inconsistent with the provisions of the Act for the various matters referred to in clause (a) to (y) of that section. The proposed rules do not lay down the exact area in which they should operate. Thus rule 1 appears to be confined to the area within the limits of the Surat Municipality only; whereas the scope of the other rules is presumably intended to extend to the whole of the Surat District. If the rules are to extend to the whole of the Surat District, rule 1 will have to be suitably amended, to provide for hours for driving cattle along with streets etc. in places other than Surat City.

2. Rule 2.- Under clause (g) of section 33(1), rules must provide for regulating and controlling the manner and mode of conveying timber etc. through the streetax and the route and hours for such conveyance. The rule itself must specify the routes and hours for conveying the articles. This cannot be left to be determined by the officer in charge of a police station.

3. Rule 3.- Under clause (i), rules have to be made for prohibiting the exposure etc. except along certain specified streets and during specified hours and subject to regulations prescribed by District Magistrate in this behalf. The proposed draft rule prohibits exposure in all streets in the District and at all times, except with the permission of the Police Station. The power to specify certain streets and the hours during which exposure may be allowed vests in the District Magistrate. The rule is therefore not legally in order.

4. Rule 4.- It is presumed such a rules is necessary

even in villages.

5. Rule 5.- Clause (0) provides for rules for regulating the conduct of and behaviour of action of persons constituting assemblies and procession on or along the streets and prescribing the routes along which the order in which and the times at which the procession may pass. The provision in draft rule (5) of the Home Department draft is obviously outside the scope of the said clause (0). It may also be held as offending against article 19(1) of the Constitution. The other provisions regarding taking out of processions is also not in order.

~~Home~~ Home Department is, therefore, requested to reconsider the draft rules in the light of the above remarks.

Id/- B. P. Dalal 9/8

Additional Deputy Secretary to Government.

U.R. to H.D. No.13195 dated the 11th August 1952.

KAN/28-6.
4 c.

Legal Department.

A revised draft drawn on the lines of rule 104 of the Bombay Motor Vehicles Rules, 1940, is sent herewith. The Home Department is requested to verify if the revised draft rules would be suitable from the administrative point of view.

Para 3. The powers conferred by section 33(1)(n) of the Bombay Police Act, 1951, cannot be used to make rules to control or prohibit the playing of music etc. in all private places after a certain hour as proposed by the District Magistrate.

Similarly, a rule as suggested by the District Magistrate providing that permission should be obtained for holding any entertainment on a public road would be outside the scope of section 33(1)(n). Roads are not meant for entertainment but merely for passing and repassing and the usual incidents connected therewith. Any other use would amount to a public nuisance.

The view taken by H.D. appears to be correct.

Id/- B. P. Dalal 3/9

Additional Deputy Secretary to Government.

U.R. to H.D. No. 14342, dated the 4th September 1952.

LEGAL DEPARTMENT.

The object of the amendment proposed by the District Magistrate is to entrust the function of granting licences for the use of loudspeakers to an Additional District Magistrate and Sub-divisional Magistrates.

The R.L.A. in his opinion in U.R. 16 H.D.No.20329, dated the 20th December 1951 has held that the function of issuing a licence for keeping a place of public entertainment must necessarily be performed by a District Magistrate and that it would not be proper to assign to Sub-divisional Magistrates.

In view of the said opinion of the R.L.A. it would not be proper for the District Magistrate to entrust the function of granting licence to any other officer. H.D. is therefore requested to reconsider the proposal in the light of the said R.L.A's opinion.

Id/- B.P. Dalal 20/9

Additional Deputy Secretary to Government.

U.R. to H.D.No.15644/B, dated the 23rd September 1952.

KAN/28-6.

4 C.

Legal Department.

The effect of the L. & H.D. Notification No. P.73-II, dated the 14th May 1952, issued under section 6 of the Bombay Shops and Establishments Act, 1948, suspending the operation inter alia of section 19 of the Act is that the provisions regarding the opening hour and closing hour of a place of public entertainment specified in that section are not binding upon a person in control of a place of entertainment during such suspension. Under section 33(1)(w)(i) of the Bombay Police Act, 1951, the Commissioner of Police and the District Magistrates within their respective jurisdiction have been empowered to make rules for licensing places of public entertainment. Under section 167 of the Act the relevant rules made under the two Police Acts have been saved. It, therefore, appears that an annual licence for keeping ~~any~~ place of public entertainment which was required under the rules made under two ^{Police} ~~Police~~ Acts respectively is being issued even now. In the R.L.A.'s opinion No. 3211, dated the 21st February 1951, this annual licence to be issued by the District Magistrate under the Bombay District ^{Po}lice Act, 1890, was referred to and it was advised that under this licence the District Magistrate cannot require a licensee to close his eating house or restaurant for any period during the day so as to nullify the benefit of the Bombay Shops and Establishment Act, 1948. In view of the opinion, the Government in para. 3 of H.D. Circular No. 3959/6, dated the 7th March 1951, have issued general instructions that the hours of business to be specified in a licence under the ^{Po}lice Acts should not conflict with the hours of business prescribed under the Bombay Shops and Establishment Act. The question of obtaining an annual licence arises not only in the area

where the Bombay Shops and Establishment Act is not in force but also in the area where it is in force (cf. sec. 1 of the said Act). In the case under consideration a reference is made, however, to a special licence issued by the Commissioner of Police or the District Magistrate and the R.L.A. is requested to advise whether, when the provisions of section 19 of the Bombay Shops and Establishment Act, 1948, are suspended, a special licence under the Police Act can be insisted upon. It is not made clear under what rule the provision for the issue of a special licence is made and whether such a special licence is of a temporary duration i.e. for less than 12 months. The question raised cannot be answered unless the relevant rules providing for a special licence are perused. The Development Department is, therefore, requested to state under what rules a provision for a separate licence is made and to forward for perusal the said rules.

Id/- B.P. Dalal 1/10

Additional Deputy Secretary to Government.

U.R. to D.D. No. 16235/B,

Dated the 3rd October 1952.

KAN/25-6.
4 c.

Legal Department.

R.L.A. is requested to advise on the two points,
viz.-

- (1) whether the proviso to rule 27 shown on page 120 (which is based on the slip at page 83 ante and which has been suggested by the Commissioner of Police) is in order, and
- (2) whether it is necessary to have a similar proviso to rule 23 on page 119 ante.

2. The proviso to rule 27 has been suggested by the Home Department in consultation with the Commissioner of Police for the reasons given in the Bombay High Court judgment in Criminal Application No.655 of 1950 in the case of the petitioner Shri B.H. Shrivatsava. In that judgment a similar rule (bearing serial No.15 in print at page 53 of the linked file) under the repealed Bombay District Police Act was considered by the Bombay High Court and it was held in that judgment that before a District Magistrate cancels or suspends the licence for any of the reasons specified in rule 15, it is necessary that he should be given an opportunity for being heard in the matter. The object of rule 23 and 27 of the proposed rules is to enable the Commissioner of Police to cancel a licence or suspend the licence for a specific period in order that the keeper of a place ~~for the reasons~~ of public entertainment should close such place for the reasons specified in either of those rules. If so, it would be better to ~~is~~ provide in the two rules that the Commissioner may cancel or suspend the licence for the reasons specified in the rules and then a general rule should be made that such power of cancellation or suspension of a licence shall not be exercised until the holder of a
been
licence has/given a reasonable opportunity of -

showing cause why his licence should not be cancelled or suspended. In that case, rule 23 may be recast as follows:-

"23. If any person keeping a place of public entertainment knowingly permits prostitutes for the purpose of their trade or persons of notoriously bad character to meet or remain in such place, the Commissioner of Police shall have the power in his discretion at any time to cancel a licence granted under these rules or to suspend it for such period as he may specify and to direct such person to close the place either permanently or for such period as he may specify. The person to whom such direction is issued by the Commissioner of Police shall forthwith comply with such direction."

And rule 27 may be recast as follows:-

"27. The Commissioner of Police shall have the power in his discretion at any time to cancel a licence granted under these rules or to suspend it for such period as he may specify and to direct the keeper of any place of public entertainment to close such place either permanently or temporarily, or otherwise act with reference thereto in order to prevent any obstruction, inconvenience, annoyance, ~~risk~~ danger or damage to the residents or passengers in the vicinity or to prevent disturbance in such place and every person keeping a place of public entertainment shall forthwith comply with such direction."

And the proviso proposed to be added to rule 27 may be made an independent rule and be numbered as rule 28 and the subsequent rules should be renumbered.

3. As desired by the Home Department in the linked file the reference to the "English" in ~~the~~ rule 9 at page 116 ante has been deleted. The corresponding rule in the mofussil now bears serial No.14 at page 79 of the linked file and the Home Department has already deleted the reference to "English" and has substituted it by "Hindi".

Id/- B.P. Dalal 8/11

Additional Deputy Secretary to Government.

U.R. to H.D., No.18690/B, dated the 10th November 1952.

KAN/28-6.
4 c.

Legal Department.

Subject to the following remarks, the following proviso may be added to rule 4(2) of the rules on p. 39 ante, namely:-

"Provided that nothing in this sub-rule shall apply to handcarts which have been duly licenced under the provisions of the Bombay Municipal Corporation Act

To be filled
in.

on or before the " "

2. Section 461(c-o) of the Bombay Municipal Corporation Act, 1888, empowers the Corporation from time to time to make by-laws for licensing of handcarts, other than those exempted from taxation under section 151 or those plying for hire in respect of which licences have been issued under Bombay Act VI of 1863. Under the said section the handcarts belonging to both the State and Central Government as also to the Corporation or which have been certified to be employed for municipal or police purposes have been exempted from taxation with the result that these handcarts would not require licensing under the provisions of section 461(o-o).

Bom. VI of 1863 has been repealed by the Bombay Public Conveyance Act, 1920. Section 3 of the latter Act provides that no person shall keep or let for hire any public conveyance without a licence granted by the Commissioner of Police in this behalf. Under this provision the handcarts of the Corporation and Government would require licensing if they are kept or let for hire. It does not appear that the handcarts belonging to the Corporation or Government are kept or let for hire with the result they would not also require any licensing under section 3 of the Bombay Public Conveyance Act, 1920. If this presumption is correct then it would not be feasible to reope in the handcarts belonging to the Corporation and the Government within the said scope of the said proviso to rule 4 on page 39 ante.

Home Department is, therefore, requested to consider whether the object in view may not be achieved by issuing executive instructions to the Corporation and the Departments of offices of Government which keep handcarts to get all their new handcarts fitted with rubber tyres.

Id/- B.P. Dalal 22/12

Additional Deputy Secretary to Government---

U.N. to H.D. No. 21607/B, dated 22nd December 1932.

KAN/28-6.
4 c.

LEGAL DEPARTMENT.

A revised draft of model rules is sent herewith subject to the following observations :

2. Section 33(1)(r)(iii) of the Bombay Police Act provides that the District Magistrate, in areas under his charge may make rules licensing, controlling or in order to prevent obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers in vicinity, prohibit the using of loud-speaker in any public street or place of public entertainment. Under that section no licence is required for the installation of a loud-speaker. The word "instal" has therefore been removed from the model draft.

3. H.D. draft rule 4(c) has been revised from the drafting point of view and has been renumbered as sub-rule (2) of rule 4.

4. Draft rule 6.— The intention appears to be that whenever any rules regarding the use of loud-speaker are amended by Government the licence should be governed by such rules. This has been made clear.

5. Draft rule 7.— This rule gives very wide power to a Police Officer to have free access to any place where a loud-speaker is being used. The power should be restricted to a place of public entertainment only. In the case where loud-speaker is used in public place the Police Officer has got always right to be on a public place. In order to show that the rule is reasonable it is necessary to provide that the Police Officer of a particular range shall have free access to such place.

6. Draft rule 10.— It has been re-cast from the drafting point of view.